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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY MICHAEL BONSTALL,

Defendant and Appellant.

B266837

(Los Angeles County
Super. Ct. No. VA138852)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Patrick T. Myers, Judge. Affirmed.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Anthony Michael Bonsall of second degree robbery and found true the special allegation he had personally used a deadly or dangerous weapon in committing the offense. In a bifurcated proceeding Bonsall waived his right to a jury trial and admitted he had suffered one prior serious felony conviction and served one prior prison term for a felony. Bonsall was sentenced as a second strike offender to an aggregate state prison term of 10 years. On appeal Bonsall contends the prior conviction enhancements must be set aside because his admission of his prior serious felony conviction was not knowing and voluntary. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

An information charged Bonsall with robbery (Pen. Code, § 211)¹ and specially alleged he had used a deadly or dangerous weapon in committing the offense (§ 12022, subd. (b)). It was also specially alleged that Bonsall had suffered a prior conviction for a serious felony within the meaning of the three strikes law (§§ 667, subds. (b)-(j); 1170.12) and section 667, subdivision (a)(1), and had served two prior prison terms for felonies (§ 667.5, subd. (b)). Bonsall pleaded not guilty and denied the special allegations.

2. The Jury Trial

At Bonsall's request the court bifurcated the specially alleged prior conviction allegations from the trial on the underlying robbery charge and specially alleged weapon enhancement. Following a three-day trial, the jury found Bonsall guilty of robbery and found true he had used a deadly or dangerous weapon, a box cutter, in committing the offense.

3. The Bifurcated Proceeding on the Specially Alleged Prior Convictions

On July 30, 2015, at the close of evidence outside the presence of the jury, the court told Bonsall, "If you're found guilty on count 1 there will be a further trial on prior convictions. . . . You can have that jury decide your prior convictions, which they don't

¹ Statutory references are to this code.

know anything about presently, or you can waive jury and let me decide the case. It would be presented to me in what is known as a bench trial. You'd have the same rights that you'd have before the jury, but it would just not be a jury trial.” The court advised Bonsall to discuss with his counsel how he wanted to proceed in regard to the bifurcated proceeding. After consulting with his counsel, Bonsall stated he would waive his right to a jury trial on his prior convictions.

On August 3, 2015 the jury returned its guilty verdict with a true finding on the weapon enhancement. Bonsall waived time, and the court continued the matter to September 1, 2015 for a bench trial on the specially alleged prior convictions. Bonsall appeared at the scheduled bench trial on September 1, 2015 and informed the court he would admit the truth of the specially alleged prior serious felony conviction and one of the two prior felony prison terms. He was advised the serious felony conviction would be both a “strike prior” and a “five-year prior,” but the court did not further admonish him of his specific trial rights before accepting his admission. Based on Bonsall’s admission, the court found one prior serious felony conviction allegation and one prior prison term allegation true beyond a reasonable doubt. The court denied Bonsall’s motion pursuant to section 1385 to dismiss the prior strike conviction, granted his request to dismiss the prior prison term enhancement and sentenced Bonsall to an aggregate state prison term of 10 years.²

DISCUSSION

1. Governing Law and Standard of Review

When a criminal defendant enters a guilty plea, the trial court is required to ensure that the plea is knowing and voluntary. (See *Boykin v. Alabama* (1969) 395 U.S. 238, 243-244 [89 S.Ct. 1709, 23 L.Ed.2d 274]; *People v. Cross* (2015) 61 Cal.4th 164, 170 (*Cross*).) “As a prophylactic measure, the court must inform the defendant of three constitutional rights—the privilege against compulsory self-incrimination, the right to

² The court selected the lower term of two years for the robbery, doubled under the three strikes law, plus five years for the prior serious felony enhancement under section 667, subdivision (a)(1), plus one year for the weapon-use enhancement.

trial by jury, and the right to confront one’s accusers—and solicit a personal waiver of each. [Citations.] Proper advisement and waiver of these rights, conducted with ‘the utmost solicitude of which courts are capable’ are necessary ‘to make sure [the accused] has a full understanding of what the plea connotes and of its consequences.’” (*Cross*, at p. 170.)³

“[T]he same requirements of advisement and waiver apply when a defendant admits the truth of a prior conviction allegation that subjects him [or her] to increased punishment.” (*Cross*, *supra*, 61 Cal.4th at p. 170; accord, *People v. Blackburn* (2015) 61 Cal.4th 1113, 1136; *People v. Mosby* (2004) 33 Cal.4th 353, 360 (*Mosby*).) In addition to being informed about his or her right to a jury trial, to remain silent and to confrontation of witnesses in connection with the prior conviction allegation, the defendant “must also be advised of ‘the full penal effect of a finding of the truth of an allegation of prior convictions.’” (*Cross*, at p. 170; accord, *People v. Howard* (1992) 1 Cal.4th 1132, 1179; *In re Yurko* (1974) 10 Cal.3d 857, 865.)

The trial court’s failure to properly advise a defendant of his or her trial rights before accepting a defendant’s plea to the truth of a specially alleged prior conviction is reversible error unless the record affirmatively shows the admission is voluntary and intelligent under the totality of the circumstances. (*Cross*, *supra*, 61 Cal.4th at p. 179; *People v. Howard*, *supra*, 1 Cal.4th at p. 1175.) In applying this totality-of-the-circumstances test, we review the whole record, not just the record of the plea colloquy, to determine whether the defendant understood his or her trial rights and whether his or her waiver of those rights was knowing and voluntary. (*Cross*, at p. 180; *Mosby*, *supra*, 33 Cal.4th at p. 361.) The court may consider a defendant’s previous experience in the

³ The Court expressly left “for another day” the question whether such advisements are constitutionally required or whether they are derived from statute. (*Cross*, *supra*, 61 Cal.4th at p. 179; see *ibid.* [“we take this opportunity to affirm the judicially created rule of criminal procedure requiring full *Boykin-Tahl* advisements for all guilty pleas in criminal trials regardless of whether the defendant’s rights are derived from statute or from the state or federal Constitution”].)

criminal justice system as relevant to this inquiry. (*Cross*, at p. 180; accord, *Mosby*, at p. 365.)

2. *Bonsall's Stipulation to the Truth of the Prior Conviction Was Voluntary and Intelligent Under the Totality of the Circumstances*

In considering Bonsall's contention his admission of his prior serious felony conviction was not knowing and voluntary, we are guided by the Supreme Court's decision in *Mosby*, *supra*, 33 Cal.4th 353. Immediately following a bifurcated jury trial in which the jury found the defendant guilty of selling cocaine, the court advised the defendant he also had a right to a jury trial on a specially alleged prior conviction. After expressly waiving that right, the defendant admitted the truth of the prior conviction. The court did not expressly advise the defendant of his right to remain silent and to confront the witnesses against him before accepting the defendant's admission. On appeal the defendant argued the court's failure to advise him as to those rights in connection with the specially alleged prior conviction rendered his admission to the truth of that conviction involuntary. (*Mosby*, at pp. 357-359.)

The Supreme Court rejected this argument, observing the trial court had told the defendant he had a right to a jury trial on the prior conviction and the defendant expressly waived that right. Although the trial court did not also articulate at that time that the defendant possessed the right to remain silent and to confront witnesses in the bifurcated proceeding in the same manner as at the trial on the underlying offense, the Court found the partial admonition under the totality of the circumstances was sufficient. The Court explained, "Here, the defendant, who was represented by counsel, had *just* undergone a jury trial at which he did not testify, although his codefendant did. Thus, he not only would have known of, but had just exercised, his right to remain silent at trial, forcing the prosecution to prove he had sold cocaine. And, because he had, through counsel, confronted witnesses at that immediately concluded trial, he would have understood that at a trial he had the right of confrontation." (*Mosby*, *supra*, 33 Cal.4th at p. 364.) The Court also found pertinent defendant's recidivist history, noting he "had prior experience in pleading guilty in the past, namely, the very conviction that he was now admitting."

(*Id.* at p. 359.) The Court held, “[u]nder the totality of the circumstances . . . that defendant had voluntarily and intelligently admitted his prior conviction despite being advised of and having waived only his right to jury trial.” (*Id.* at p. 365.)

As was true in *Mosby*, Bonsall was adequately informed of and waived all of his trial rights at the time of his prior serious felony conviction—a residential burglary in Riverside County. (Bonsall does not challenge the adequacy of that waiver.) In addition, when the court advised Bonsall of his right to a jury trial on the prior conviction allegations in the case at bar and accepted his waiver of that right (a waiver also not challenged by Bonsall), the court advised Bonsall he was entitled at a bench trial on those allegations to “all the same” trial rights he had at the trial on the underlying charge. Thus, the admonitions in the instant matter were even stronger than the partial advisement in *Mosby*. Although the court did not specify those trial rights included the right to remain silent and to confront witnesses, like the defendant in *Mosby*, Bonsall had been advised of, and had just exercised, those rights at his trial on the underlying robbery charge.⁴

Bonsall contends *Mosby* is distinguishable because the defendant in that case admitted the truth of the prior conviction allegation immediately after the jury’s verdict on the underlying charge, while in the instant matter Bonsall’s admission occurred 32 days after the court’s admonition and his waiver of his trial rights. The one-month interval between advisement and waiver does not change our conclusion. This is not a case in which the court failed to advise Bonsall of any of his trial rights concerning the specially alleged prior conviction. (See, e.g., *People v. Campbell* (1999) 76 Cal.App.4th 305, 309 [“In this case, *there were no admonitions* with respect to any of the three constitutional rights. All that preceded Charles’s admission of the priors was the district

⁴ Bonsall suggests in passing in his opening brief that the court did not advise him of the penal consequences of his admission. In fact, at the time of Bonsall’s admission his counsel acknowledged, and the court reiterated, that Bonsall’s admission to the prior serious felony would have two consequences: It qualified him as a second strike offender under the three strikes law and, in addition, required imposition of a five-year enhancement under section 667, subdivision (a)(1).

attorney's reading the allegation and the court's asking Charles if he wanted to admit it"]; *People v. Johnson* (1993) 15 Cal.App.4th 169, 178 [enhancement based on prior convictions is properly set aside when trial court made only a "fleeting" reference to the defendant's right to a jury trial on the prior conviction and took defendant's stipulation immediately without waiting for defendant's waiver of that right].) Bonsall was advised of his right to a trial on the truth of the specially alleged prior convictions and told he would enjoy all the same rights in that proceeding as he did at trial on the underlying charge. Under the totality of the circumstances, we have no difficulty concluding Bonsall's admission of the specially alleged prior serious felony conviction was knowing and voluntary. (*Mosby, supra*, 33 Cal.4th at p. 364.)⁵

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

KEENY, J.*

⁵ The Supreme Court is currently considering the question whether the totality-of-the-circumstances test applies in a "silent record case" when there is no specific advisement at all in connection with a plea to an underlying charge as opposed to the partial advisement that occurred in the case at bar. (See *People v. Farwell* (2015) 241 Cal.App.4th 1313, review granted, Feb. 3, 2016, S231009.)

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.